IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 25TH SEPTEMBER 2006 / 3RD ASWINA 1928

ST.Rev..No. 516 of 2004()

TA.491/2000 of S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD
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REVISION PETITIONER/RESPONDENT/REVENUE:

STATE OF KERALA, REP. BY DEPUTY COMMISSIONER(LAW), COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW.

RESPONDENT/APPELLANT/ASSESSEE:

M/S.KOLLANNUR DEVASSY SONS, THRISSUR.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SRI.FRANKUR D.JAYAN
SMT.DEEPSUR D.JAYAN
SRI.K.P.PRADEEP (PAYYANNUR)
SRI.SHANMUGHAM D. JAYAN
SMT.P.K.MAYA DEVI
SRI.SAJU SADANANDAN

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 25/09/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.REV.CASE No. 516 OF 2004

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Dated this the 25th day of September, 2006.

JUDGMENT

Ramachandran Nair, J.

Heard Government Pleader and the counsel for the respondent. Even though questions raised in the Revision are of general nature, the questions have to be considered with reference to the adverse findings of the Tribunal against the State, which are on two issues. The respondent-assessee is a wholesale dealer in oil, grocery etc. On scrutiny of accounts, the Assessing Officer found that in the grocery sales respondent has accounted 2.27% profit on non-taxable sales. However, in the taxable sale of the same commodity respondent has suffered a loss of 33.1%. The Officer therefore estimated taxable turnover by adding 10% towards gross profit to purchase turn over. In first appeal the First Appellate Authority reduced gross profit addition to 7%. The Tribunal on second appeal directed acceptance of accounts. We are surprised to find that the reasoning of the Tribunal does not appeal to any logic or reason. For the very same commodity while

respondent accounted huge loss on first sales they have accounted profit in second sales, which obviously means that accounts are manipulated. This is because, in normal course profit in second sale should be less because another dealer at first sale point in the State has already booked profit. Moreover, if second sale is profitable, we do not know why respondent should bring same goods from outside State to make first sales and suffer loss. In any case, petitioner has not offered any explanation to justify over ten times variation in profit in the trade result of first sale and second sale of same commodity. Therefore we find no justification for the Tribunal to allow the case by ordering acceptance of accounts. The order of the Tribunal on this point is therefore reversed restoring the order of the first appellate authority.

2. The next issue pertains to valuation of loose sale of oil. Respondent assessee accounted sale price of loose oil at Rs.7.22 per Kg., whereas the closing stock value as per the accounts is Rs.34.66 per Kg. While the Officer fixed closing stock value at Rs.34.66 per Kg., the first appellate authority reduced it to Rs.20/- per Kg. The Tribunal though accepted rejection of accounts, reduced the value to Rs.15/- per

Kg. We are unable to accept the reasoning of the Tribunal because the respondent's claim that loose oil is of inferior quality even if accepted does not justify the low value adopted by the Tribunal. There is nothing to indicate that closing stock does not include loose oil. The Tribunal has also not considered the sale price of higher quality oil, that is filtered oil sold in tins. In any case sediments in crushed oil cannot account for so much price difference, that is between Rs.34/- and Rs.15/-. We are of the view that the order of the first appellate authority fixing the sale price at Rs.20/- itself is quite favourable to the respondent assessee and the Tribunal without any material interfered with the said order. We therefore reverse the order of the Tribunal on this issue also and restore the order of the First Appellate Authority.

Sales Tax Revision Case is accordingly allowed completely cancelling the order of the Tribunal.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(K.M. JOSEPH, JUDGE)

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K.S.RADHAKRISHNAN & K.M.JOSEPH, JJ.

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